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showed the incorporation of defendant. A demurrer to the complaint, based on the failure to allege incorporation, was overruled. *Held*, that the attached bond was such a part of the complaint that it was sufficient on demurrer. *Sogn v. Koetsle, et al.*, (S. D. 1916) 160 N. W. 520.

Pleading by way of exhibits, although known to the old equity practice, was not known at common law. The authorities are not uniform in their holdings as to whether an instrument of writing annexed to the complaint, and alleged to be a part thereof, can be considered in determining the sufficiency of the allegations of the complaint when a demurrer is interposed. 6 ENC. PL. & PR. 299. The weight of authority probably supports the rule that in the absence of a statute the annexing and filing of papers as exhibits to a pleading does not make them a part thereof. *Stratton v. Henderson*, 26 Ill. 69; *Hadwen v. Home Mut. Ins. Co.*, 13 Mo. 473; *Larimore v. Wells*, 29 Oh. St. 13; *Aultman v. Siglinger*, 2 S. D. 442. It naturally follows that they cannot be referred to for the purpose of remedying the omission of a material allegation or curing a fatal defect. *Hickey Co. v. Fugate*, 143 Mo. 71; *Burkett v. Griffith*, 90 Cal. 532; *Wynne v. State Nat. Bank*, 82 Tex. 378; *Cave v. Gill*, 59 S. C. 256. However, the court deciding the principal case repudiated the doctrine set forth above, and, referring to *Aultman v. Siglinger*, cited *supra*, stated that its decision had long been disaffirmed in South Dakota and other states. The decision of the case under consideration is supported by authorities. *Stephens v. American Fire Ins. Co.*, 14 Utah 265; *Hudson v. Scottish Union & Nat. Ins. Co.*, 110 Ky. 722; *Pefley v. Johnson*, 30 Neb. 529. It should be noted that in spite of the conflict as to the value of an exhibit attached to a pleading demurred to, the courts quite generally agree that exhibits may be looked to for definiteness and certainty of material allegations. 8 ENC. PL. & PR. 741.

PROCESS—EXEMPTION OF WITNESS IN REPRESENTATIVE CAPACITY.—The managing agent of the defendant corporation was served in X County with summons, directed against the corporation, while passing through said county to attend court as a witness in Y County. The defendant was a domestic corporation located and doing business in Y County and its only representative in X County when the summons in question was served was the above mentioned agent. The plea attacking the jurisdiction was overruled, an exception to the ruling was reserved, and, after a trial on the merits, judgment was given for the plaintiff. *Held*, that the plea to the jurisdiction should have been sustained. *Commonwealth Cotton Oil Co. v. Hudson*, (Okla. 1916) 161 Pac. 535.

The legislature of Oklahoma has provided that "a witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning, or attending in obedience to a subpoena." REVISED LAWS 1910, §5064. In applying that statute to the facts of the case under consideration two important questions are presented, (1) does the exemption apply to the witness in his representative capacity? and (2) does the exemption exist outside of the jurisdiction of the court whose subpoena the witness is obeying? On a similar state of

facts it has been held that the witness is exempt only in his personal capacity. *Currie Fertilizer Co. v. Krish*, (Ky.) 74 S. W. 268; *Linn v. Hagan*, 121 Ky. 627, 87 S. W. 1101; *Breon v. Miller Lumber Co.*, (S. C.) 65 S. E. 214, 24 L. R. A. N. S. 276. However, the weight of authority apparently supports the holding in the principal case that the exemption applies to a witness in both his personal and representative capacities. *Sewannee Coal, Coke & Land Co. v. Williams*, 120 Tenn. 339, 107 S. W. 968; *Mulhearn v. Press Pub. Co.*, 53 N. J. Law 153, 21 Atl. 186, 11 L. R. A. 101. See also 32 Cyc. 493 and 24 L. R. A. N. S., note. On the second point, there appear to be only two reported cases which have held that a suitor or witness is not exempt from service while in an intermediate state en route to or from a trial. *Holyoke Coal, Coke & Land Co. v. Ambden*, 55 Fed. 593, 21 L. R. A. 319; *Cronk v. Wheaton*, 15 Pa. Dist. Rep. 721. On the other hand, the doctrine that such persons are exempt from service when in an intermediate state is supported by the decision of one case and the dictum of another. *Lofge v. Lowes*, 131 Tenn. 626, 176 S. W. 106, L. R. A. 1916A 734; *Barber v. Knowles*, 77 Oh. St. 81, 82 N. E. 1065, 14 L. R. A. N. S. 663, 11 Ann. Cas. 1144. Further, the rule of the principal case as applied to intermediate counties is supported by authority. *Tyrone Bank v. Doty*, 2 Pa. Dist. Rep. 558, 12 Pa. Co. Ct. 287; *Hoffman v. Judge of Circuit Ct.*, 113 Mich. 109, 71 N. W. 480, 38 L. R. A. 663, 67 Am. St. Rep. 458. Thus it seems that the interpretation of the Oklahoma statute, while very liberal and extensive in its application, is in accord with the better reason and authority. For a discussion of the question as to whether this defect in service was waived by pleading to the merits after the plea to the jurisdiction was overruled, see the following note.

PROCESS—WAIVER OF DEFECT IN SERVICE BY PLEADING TO MERITS.—The defendant corporation, after excepting to the order of the court overruling its plea to the jurisdiction, went to trial on the merits. Judgment was rendered for the plaintiff and an appeal taken. Held, that the defendant did not waive the jurisdictional objection by contesting the case on the merits. *Commonwealth Cotton Oil Co. v. Hudson*, (Okla. 1916) 161 Pac. 535.

The decisions of the various courts of the United States are in hopeless conflict on the question of waiver raised in the principal case. 16 L. R. A. N. S. 177, note; L. R. A. 1916E 1082, note. For a full discussion of the question, see "PRESERVING A SPECIAL APPEARANCE," 9 MICH. L. REV. 396. While it may seem incongruous to maintain that one can contest a cause on its merits and still not waive objections to the jurisdiction, yet it may be answered that it is hardly fair for a defendant to be deprived of the benefit of jurisdictional defects when he, in court under protest, defends himself under compulsion rather than suffer judgment by default. This is the reasoning on which the decision in the principal case was based. For a discussion of the precise jurisdictional question involved in this case, see the preceding note.

WILLS—EXTRAORDINARY STOCK DIVIDEND AS RESIDUE.—At the time of making her will, testatrix was the owner of 30 shares of stock in the Stand-